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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH DEMETRIUS LYLES, Defendant and Appellant.	B187100 (Los Angeles County Super. Ct. No. BA271778)

APPEAL from a judgment of the Superior Court of Los Angeles County, Alice E. Altoon, Marsha N. Revel, William C. Ryan and Fred Wapner, Judges. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Chung L. Mar and Marc A. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Joseph Lyles appeals from the judgment entered following a jury trial in which he was convicted of robbery. He contends that the trial court erred in conducting proceedings regarding his competency to stand trial, in failing to explore whether he wanted to abandon his in propria persona status, and in failing to declare a doubt about his competency during the course of trial. We affirm

BACKGROUND

By information filed October 21, 2004, defendant was charged with robbery. At a hearing on November 16, 2004, defense counsel told the court that defendant wanted to exercise his right of self-representation, but that counsel had a doubt about defendant's competence to stand trial. The court declared a doubt as to defendant's competence and the matter was referred for psychiatric evaluation. Three psychiatric reports were later submitted to the court, two of which concluded that defendant was not competent to stand trial.

A competency hearing was held on February 1, 2005. The court asked both counsel if they were waiving jury trial. Counsel said that they were. Defendant stated, "I'd like a jury trial, your Honor. I really like a motion of *Marsden*[**1**] motion — [¶] . . . [¶] — and set it for jury." The court did not directly respond to defendant's request. The court ruled, "Based on the reports that I have before me, I'm going to allow counsel to waive jury on behalf of [defendant]." Both counsel then stated that they would call no witnesses, stipulating that the alienists reports could be considered without live testimony. Based on the reports, the court found that defendant was not competent to stand trial, criminal proceedings were suspended, and defendant was placed in a state hospital.

A report from Metropolitan State Hospital dated June 16, 2005, concluded that defendant was competent to stand trial. The report noted that two alienists who had examined defendant at the Twin Towers Correctional Facility determined that defendant

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1 *People v. Marsden* (1970) 2 Cal.3d 118.

was incompetent to stand trial, stating that defendant "demonstrated delusions of grandeur, responding to internal stimuli, disorganized, believing that Snoopy Doggie Dog and Ice-T are his friends, and he receives $2.4 millions worth of endorsements." Following these evaluations, defendant was committed to Patton State Hospital and later transferred to Metropolitan State Hospital. Ultimately, defendant was restored to competency. A then-recent psychiatric report noted that "although [defendant] continues to express grandiose delusional thoughts, his delusions do not seem to interfere with his competency level and current functioning."

On June 23, 2005, the medical director of Metropolitan State Hospital signed a "Certification of Mental Competency Section 1372 Penal Code," certifying that defendant was competent to stand trial.

On July 28, 2005, defendant appeared in court with counsel. The proceeding began with the court stating: "The defendant has been found competent. [¶] It is here for picking a pretrial date and a trial date." Defense counsel told the court that defendant wanted to represent himself. The court provided defendant with the paperwork to make an in propria persona application, and the matter was put over until the next day.

On July 29, 2005, defendant was granted in propria persona status and the matter was set for jury trial, with the last day for trial being September 26.

When the matter was called for hearing on September 12, 2005, the following ensued:

"[Attorney] McCray-Clark: Alice McCray-Clark appearing to represent [defendant] in the event he would like counsel.

"[The Prosecutor]: Kenneth Kahn, Deputy District Attorney.

"The Court: All right. Mr. Lyles, what do you wish to do today? You're here for pretrial. Today is 50 of 60. So we're about ready to go to trial on this case.

"The Defendant: First of all I would like to file these documents.

"[Attorney] McCray-Clark: First of all I would like to know if [defendant] would like representation?

"The Court: You know what the charge is, it's robbery. Pretty serious charge. I don't know what the allegations in the —

"[Attorney] McCray-Clark: May I say one thing, your Honor, before you finish?

"The Court: Yes you may.

"[Attorney] McCray-Clark: [Defendant] would like a jury trial in four days, yes. And he said to me, 'I should be ready for jury trial in four days.'

"The Court: Does that mean you wish Ms. McCray-Clark to represent you?

"The Defendant: Yes, if she's willing to.

"[Attorney] McCray-Clark: I told him that I try all kinds of cases. And in this case —

"The Court: I know you can't try it in four days.

"[Attorney] McCray-Clark: Four days with the evidence I have not received as of yet.

"The Court: First of all the People have a legal right to trail to 60 of 60 if they wish.

"[The Prosecutor]: Your Honor, first of all, I would like to know the threshold question, is [defendant] relinquishing his pro per status and does he wish this court to appoint him a lawyer?

"The Court: Yes, that's what he just said. [¶] Is that what you want Mr. Lyles?

"The Defendant: Your Honor I request a jury trial in four days, if she's willing to assist me in four days.

"The Court: Either she's your lawyer or you're your lawyer.

"The Defendant: I'll be my lawyer.

"[Attorney] McCray-Clark: That's fine.

"The Court: Thank you Ms. McCray-Clark."

The hearing continued with the prosecutor asking to trail to day 60 of 60. Defendant objected on speedy trial grounds. The court reminded defendant that he had been arraigned a second time after his competency was restored and denied defendant's motion. The matter was then continued to a later date.

The matter proceeded to jury trial with defendant representing himself. The evidence established that on September 23, 2004, defendant entered a convenience store in Los Angeles and forced an employee to print out money orders payable to him. In addition to the money orders, defendant took $400 in cash and three packs of Newport cigarettes from the store. Defendant was detained soon after the robbery a short distance away. He was identified by two store employees, and officers found some of the stolen money orders, cash, and Newport cigarettes on defendant's person.

In defense, defendant testified that he did not commit the robbery but had received the cigarettes and cash from an acquaintance that day.

DISCUSSION

1. Competency Determinations

Defendant contends: "The judgment of guilt should be reversed because: (1) the trial court did not obtain personally from [defendant] a valid waiver of his right to a jury trial when criminal proceedings were suspended pursuant to Penal Code section 1368; (2) the trial court did not obtain a valid waiver of [defendant's] right to a jury or bench trial from [defendant] or his trial defense counsel when criminal proceedings were reinstated; and (3) the trial court violated [defendant's] Sixth Amendment right of confrontation during the hearing in which [defendant] was found incompetent to stand trial by allowing the issue of his competency to be resolved based on the reports of the psychiatrists." We disagree.

As defendant acknowledges, his position regarding jury waiver is contrary to Supreme Court precedent that counsel may waive jury at a competency hearing without a personal waiver from the defendant. (*People v. Lawley* (2002) 27 Cal.4th 102, 131; *People v. Masterson* (1994) 8 Cal.4th 965, 969, 972.) Nor has defendant provided any authority to preclude counsel from stipulating to hearing the issue of competency based on the reports of alienists prepared for that purpose.

At the competency proceeding conducted on July 28, 2005, defendant did not challenge the conclusions of the certification of competency or ask for a hearing on the issue. In such a situation, the trial court has "authority to summarily approve the

certification." (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1480; see also *People v. Rells* (2000) 22 Cal.4th 860, 867 [defendant has the burden of disproving the certification by a preponderance of the evidence].)

Based on the foregoing, defendant's contentions regarding the manner in which the competency hearings were conducted must be rejected.

2. Waiver of In Propria Persona Status

Defendant contends that the trial court erred at the hearing on September 12, 2005, when it failed to pose additional questions to him regarding his desire to be represented by Attorney McCray-Clark on condition that the trial start in four days. Again, we disagree.

Defendant is correct that the trial court has a sua sponte duty to conduct an adequate inquiry to determine if a defendant wants to waive the right to counsel. (See, e.g., *People v. Noriega* (1997) 59 Cal.App.4th 311, 319). But defendant here has failed to identify any inadequacy in the trial court's inquiry. In a previous hearing that defendant does not challenge, defendant successfully asserted his right to self-representation. Regardless of whether defendant mistakenly thought that trial would begin in four days (as appellate counsel asserts) or merely desired that it start within that time frame, there is no authority that would require the trial court to inquire further regarding defendant's failure to accept the offer of new counsel. Defendant has not shown that the trial court abused its discretion in failing to conduct additional inquiry regarding possible representation by McCray-Clark. (Cf. *People v. Gallego* (1990) 52 Cal.3d 115, 163–164.)

3. Failure to Declare a Doubt During Trial

Finally, defendant asserts that his conduct during trial was such that a doubt should have been declared regarding his competency to continue. For example, he filed various motions and requests that had no basis, and his examination of witnesses included asking an employee of the store that he robbed if she remembered him "inside the store with other celebrities, as far as Erykah Badu, Snoop Dog, Beyonce?"

"When, at any time prior to judgment, a trial court is presented with substantial evidence of a defendant's incompetence to stand trial, due process requires a full hearing. [Citation.] '"When a competency hearing has already been held and defendant has been found competent to stand trial, however, a trial court need not suspend proceedings to conduct a second competency hearing unless it 'is presented with a substantial change of circumstances or with new evidence' casting serious doubt on the validity of that finding."' [Citation.]" (*People v. Lawley*, *supra*, 27 Cal.4th at p. 136.)

Although defendant was apparently suffering from some of the same delusions he harbored when he was first evaluated after being found incompetent to stand trial, it was later determined that such "grandiose delusional thoughts" did not interfere with his competency to stand trial. As in *Lawley*, "[i]n short, the record fails to establish any change of circumstance or new evidence casting doubt on the prior finding of competency." (27 Cal.4th at pp. 137–138.) Accordingly, defendant's argument must be rejected.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, Acting P. J.

We concur:

ROTHSCHILD, J.

JACKSON, J.*

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* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.